Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the
SUPREME COURT OF THE UNITED STATES

JAMES ZHANG

Petitioner

v.

FOOTBRIDGE LIMITED TRUST

Respondent

On Petition for Writ of Certiorari
To the United States Court of Appeals for
The District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the "plain meaning" of Rule 11 of the Federal Rules of Civil Procedure sanctions the reading thereof that carves out an exception for a pleading that is found not "incredible;"

2. Whether the requirements set out by this Court in Cooter for determining Rule 11 sanctions require the district court's determinations of both the legal basis and the factual basis of a pleading;

3. Whether the post-filing "extensive discovery" required for a court to render its summary judgment on a complaint absolves the filing of a vacuous complaint lacking factual basis at the time of filing;

4. Whether this Court in Cooter adopted a process of appellate review that requires the review of both factual determinations and legal interpretation of law by the district court in its Rule 11 decision;

5. Whether a frivolous pleading is a pleading that is "incredible;"

6. Whether a pleading with no evidentiary support violates Rule 11 of the Federal Rules of Civil Procedure; and

7. Whether this Court's decision in Bus. Guides, Inc. is a controlling precedent applicable to the instant case.

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CITATION OF OFFICIAL REPORT OF OPINION

Footbridge Ltd. Trust v. Zhang, 584 F.Supp.2d 150 (D.D.C. 2008)

JURISDICTION

1. On December 7, 2009 the judgment sought to be reviewed was entered by the United States Court of Appeals for the District of Columbia Circuit;

2. On February 2, 2010 the order denying petition for rehearing en banc was entered by the United States Court of Appeals for the District of Columbia Circuit; and

3. Rule 10 of the Rules of the Supreme Court of the United States confers on this Honorable Court jurisdiction to review on a writ of certiorari the judgment in question.

FEDERAL RULE OF CIVIL PROCEDURE

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature.

Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and

telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court.
By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information (2009).

FACTS MATERIAL TO CONSIDERATION

The United States District Court for the District of Columbia had original jurisdiction over the instant case pursuant to 28 U.S.C. §1332(a) (2004).

In January 2004 Footbridge Limited Trust ("Footbridge") through its counsel Peter L. Goldman filed a complaint against James Zhang (the "Complaint") in the Superior Court of the District of Columbia alleging legal malpractice and negligence, demanding $2,250,000 damages for Zhang's alleged untimely filing of a mortgage to perfect the security interest of a non-party that made a real estate loan in 2000 to later bankrupt borrowers. One fact in the Complaint that is pertinent to this Honorable Court's consideration of the current petition is that Footbridge's counsel Goldman declared "under the penalty of perjury" that expert testimony may not be necessary.

In March 2004 Zhang removed the complaint to the United States District Court for the District of Columbia pursuant to 28 U.S.C. §1332(a) (2004).

On November 5, 2008 the United States District Court granted Zhang's motion for summary

judgment and dismissed the Complaint in its entirety. As to Footbridge's claim of $2,250,000 damages, the District Court found that "[t]hese allegations [of damages] are largely unsupported by record evidence." Footbridge Ltd. Trust v. Zhang, 584 F.Supp.2d 150, 155 n. 4 (D.D.C. 2008).

The District Court rejected Footbridge's argument that the expert testimony requirement explicitly adopted by the United States Court of Appeals for the District of Columbia Circuit in Kaempe v. Myers, 367 F.3d 958 (D.C. Cir. 2004), was not necessary to prove Zhang's alleged legal malpractice. The District Court found that "the standard of care necessary to prove Footbridge's claims is unlikely to be within the 'common knowledge' of an average juror," Zhang, 584 F.Supp.2d., at 160, and the District Court was "not persuaded otherwise by Footbridge's non-responsive argument that the problems associated with the absence of expert testimony are 'speculative' and 'misleading.' Because Footbridge did not produce a timely expert report in this case, it is precluded from offering expert testimony at trial necessary to support its claims." Id. Accordingly, the District Court granted Zhang's motion for summary judgment.

Even if Footbridge could produce expert testimony, which the District Court already held it could not due to the lack of a timely expert report, the District Court would still reject Footbridge's malpractice and negligence claims "because there is no evidence in the record that Zhang breached this unspecified standard.... At bottom, Footbridge proffers no facts supported by evidence that connect

Zhang to the loan transaction at issue, nor any facts suggesting that Zhang undertook and breached a legal obligation that he owed to Footbridge." Id., at 160-161 (Emphases added). Accordingly, the District Court granted Zhang's motion for summary judgment.

The District Court at last also rejected Footbridge's claims based on its being a purported third-party beneficiary of Zhang's alleged legal practice because "there is no evidence that Zhang intended Footbridge to be a beneficiary of his work on the loan transaction, nor evidence that he was even aware of the existence of Footbridge or the loan transaction." Id., at 161-162 (Emphases added). Accordingly, the District Court concluded that "Footbridge's claims must fail at this stage of the litigation." Id., at 162.

On November 5, 2008 Zhang filed a motion for Rule 11 sanctions against Footbridge's counsel Goldman. On November 13, 2008, before Goldman responded to Zhang's motion, the District Court denied Zhang's motion for Rule 11 sanctions while judging Zhang's motive for filing the motion as "an apparent effort to prolong this seemingly never-ending litigation" (App. p. 6).

In its opinion, after the District Court identified Zhang's arguments that "[Footbridge] failed to make a reasonable inquiry before filing the Complaint in this case, presented legal contentions that were not warranted based on existing law, and made a factual allegation with no evidentiary support" (App. p. 8), the District Court summarily concluded that it

"cannot find that [Footbridge's] Complaint, nor the factual and legal assertions therein, were presented for improper purposes, nor that they were so incredible as to warrant sanctions. On the contrary, the parties' respective positions required extensive discovery and briefing before the Court could ultimately render its [summary judgment] decision" (App. p. 8) (Emphases added).

On December 10, 2008 Zhang appealed the District Court's order denying Zhang's motion for Rule 11 sanctions against Goldman. On December 7, 2009 the United States Court of Appeals for the District of Columbia Circuit entered the judgment affirming the District Court's order.

After quoting the District Court's opinion, the Court of Appeals summarily concluded without its own explanation that "Zhang's assertions that the district court ignored his legal arguments and provided an insufficient explanation for its decision are without merit" (App. p. 3). The Court of Appeals similarly rejected Zhang's argument without explanation that the District Court denied Rule 11 sanctions "'*solely*' because Footbridge's complaint was not presented for improper purposes" (App. p. 3) (emphasis original) and agreed with the District Court that "Footbridge's complaint was not 'so incredible as to warrant sanctions'" (App. p. 3).

The Court of Appeals identified Zhang's argument that "Footbridge's complaint was frivolous because it lacked evidentiary support and because Footbridge failed to produce expert testimony establishing the applicable standard of care" (App. p. 4). But the

Court of Appeals equated the District Court's determination that Footbridge's Complaint was not "so incredible as to warrant sanction" (App. p. 8) to its own determination that the Complaint "was not so frivolous as to warrant sanctions" (App. p. 5) and, ironically, concluded that "[w]e see no reason to second guess that determination" (App. p. 5).

ARGUMENT

I. The Court of Appeals' decision conflicts with the "plain meaning" this Court in Pavelic gave to the Federal Rules of Civil Procedure.

Rule 11 of the Federal Rules of Civil Procedure provides in relevant part that when a pleading is presented to the district court, the attorney certifies that "the claims, defenses, and other legal contentions are warranted by existing law," Fed.R.Civ.P. 11(b)(2) (2004), and that "the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed.R.Civ.P. 11(b)(3) (2004). In Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120, 110 S.Ct. 456 (1989) this Court stated that "[w]e give the Federal Rules of Civil Procedure their plain meaning, Walker v. Armco Steel Corp., 446 U.S. 740, 750, n. 9 (1980), and generally with them as with a statute, 'when we find the terms... unambiguous, judicial inquiry is complete,' Rubin v. United States, 449 U.S. 424, 430 (1981)." Id., at 123.

The terms of Rule 11(b)(2)-(3) requirements for filing a pleading are unambiguous, and they clearly do not carve out an exception to the requirements for a pleading that a district court finds not "incredible," as the District Court in the instant case did. Since the Court of Appeals accepted the District Court's language at wholesale without providing its own analysis (App. p. 3), the Court of Appeals has decided the requirements of Rule 11 of the Federal Rules of Civil Procedure in a way that conflicts with this Court's decision in Pavelic & LeFlore v. Marvel Entertainment Group, 493 U.S. 120. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States.

II. The Court of Appeals' decision conflicts with the two requirements for determining Rule 11 violations this Court set out in Cooter.

Applying the "plain meaning" of the Federal Rules of Civil Procedure to the interpretation of Rule 11, this Court in Cooter & Gell v. Hartmarx, 496 U.S. 384, 110 S.Ct. 2447 (1990), stated that determining whether an attorney has violated Rule 11 involves considerations of three aspects of the Rule 11 requirements:

> The court must consider factual questions regarding the nature of the attorney's prefiling inquiry and the factual basis of the pleading or other paper. Legal issues are raised in considering whether a pleading is "warranted by existing law"...

> and whether the attorney's conduct violated Rule 11. Finally, the district court must exercise its discretion to tailor an "appropriate sanction." Id., at 398.

According to this Court's above interpretation of Rule 11, determining Rule 11 sanction is a two-step process. First, the district court must determine whether a pleading is both supported by factual basis and warranted by existing law. If the district court determines that either one of the two requirements is violated, then it must decide, in its discretion, the appropriate sanction. Neither one of the Cooter requirements, however, has to do with a pleading's "credibility," which was a criterion the Court of Appeals in its judgment endorsed the District Court to have used (App. p. 3). Since the legal basis of Footbridge's Complaint was not a matter of being credible or incredible — it was a binary determination that the case law either formed or did not form the basis of the legal claims when the Complaint was filed, the "credibility" of the Complaint to which the District Court referred could only refer to the factual basis of the Complaint. Thus, when the District Court concluded that the Complaint was not "so incredible as to warrant sanctions" (App. p. 8), by pure operation of logic it necessarily considered only the first requirement set out by this Court in Cooter and failed to consider whether the Complaint was "warranted by existing law." Hence, the Court of Appeals has decided, by affirming the District Court's deficient requirements, the requirements for determining

violation of Rule 11 of the Federal Rules of Civil Procedure in a way that conflicts with this Court's decision in Cooter & Gell v. Hartmarx, 496 U.S. 384. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States.

III. **The Court of Appeals has entered a decision interpreting Rule 11(b)(3) in conflict with the Seventh Circuit's decision in Frantz.**

The Court of Appeals, without providing its own analysis, accepted the District Court's language at wholesale that denied Rule 11 sanctions also because "extensive discovery" was required before the District Court ruled in favor of Zhang (App. p. 3). Rule 11(b)(3) requires that the factual contentions in a pleading have "evidentiary support," but such a requirement at the time of filing the pleading is not in any way related to the amount of post-filing discovery a district court requires before rendering its decision. The "plain meaning" of Rule 11(b)(3) simply does not read to mean that the filing of a vacuous pleading is to be absolved by post-filing discovery if the discovery turns out to be "extensive."

The United States Court of Appeals for the Seventh Circuit explicitly rejected the legal proposition that the need for discovery, *ipso facto*, would act as a *deus ex machina* to rescue an attorney filing a pleading devoid of evidentiary support from otherwise inevitable Rule 11

sanctions, as it stated, "Rule 11 must not bar the courthouse door to people who have some support for a complaint but need discovery to prove their case, yet the need for discovery does not excuse the filing of a vacuous complaint." Frantz v. United States Powerlifting Fed'n, 836 F.2d 1063, 1068 (7th Cir. 1987). Hence, the Court of Appeals has entered a decision, by affirming the District Court's interpretation of Rule 11(b)(3) of the Federal Rules of Civil Procedure, in conflict with the United States Court of Appeals for the Seventh Circuit's decision. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(a) of the Rules of the Supreme Court of the United States.

IV. The Court of Appeals' decision on the process of appellate review of Rule 11 decision conflicts with the bifurcated appellate review process set out by this Court in Worthington.

In its judgment the Court of Appeals quoted the language from Shekoyan v. Sibley Int'l, 409 F.3d 414 (D.C. Cir. 2005), as the appellate review standard for Rule 11 sanctions: "'decisions concerning Rule 11 sanctions are better left to the discretion of the district court which has a bird's eye view of the actual positions taken by the litigants,' and [we] will not second guess the factual determinations integral to the district court's decision not to impose Rule 11 sanctions" (App. pp. 4-5). However, the Court of Appeals confounded the review of the District Court's factual determination with the review of the District Court's legal determination.

As this Court stated in Cooter,

> this [deferential] standard [of appellate review] would not preclude the appellate court's correction of a district court's legal errors..., or relying on a materially incorrect view of the relevant law in determining that a pleading was not "warranted by existing law or a good faith argument" for changing the law. An appellate court would be justified in concluding that, in making such errors, the district court abused its discretion. "If a district court's findings rest on an erroneous view of the law, they may be set aside on that basis." Pullman-Standard v. Swint, [internal citation omitted]. See also, Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709, 714 (1986) ("If [the Court of Appeals] believed that the District Court's factual findings were unassailable, but that the proper rule of law was misapplied to those findings, it could have reversed the District Court's judgment"). Cooter, 496 U.S., at 402.

The appellate review process set out by this Court in Worthington and explicitly adopted to the appellate review of Rule 11 decisions later by this Court in Cooter clearly indicates that the appellate review of Rule 11 decision requires the review of the district court's factual findings and the review of the district court's legal interpretation of the law.

When the Court of Appeals stated that "[we] will not second guess the factual determinations integral to the district court's decision not to impose Rule 11 sanctions" (App. pp. 4-5), it obviously reviewed only the District Court's factual determinations. Even if the Court of Appeals could defer to the District Court's factual determination that Footbridge's pleading had evidentiary support, which determination the District Court did not make, the Court of Appeals still failed to review the District Court's interpretation of law because whether Footbridge's pleading was warranted by the existing case law Kaempe v. Myers, 367 F.3d 958, at the time of filing as required by Rule 11(b)(2) was a question of law. Hence, the Court of Appeals has decided on the process of appellate review of a Rule 11 decision in a way that conflicts with the appellate review process set out by this Court in Worthington and adopted in Cooter for review of Rule 11 decisions. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States.

V. The Court of Appeals has defined a "frivolous" pleading in conflict with that defined by the Second and Fourth Circuits.

The District Court concluded that the Complaint was not "so incredible as to warrant sanctions" (App. p. 8); whereas the Court of Appeals read the conclusion as "[t]he district

court concluded that..., [the Complaint] was not so frivolous as to warrant sanctions. We see no reason to second guess that determination..." (App. p. 5). Since the Court of Appeals did not second guess the District Court's conclusion, the Court of Appeals must have decided that "frivolous" and "incredible" are synonymous in the context of Rule 11 interpretation; thus, according to the Court of Appeals a "frivolous" pleading is a pleading that is "incredible."

However, the United States Court of Appeals for the Second Circuit held, "to constitute a frivolous legal position for purposes of Rule 11 sanction, it must be clear under existing precedents that there is no chance of success." Mareno v. Rowe, 910 F.2d 1043, 1047 (2nd Cir. 1990). Similarly, the United States Court of Appeals for the Fourth Circuit held, "[a] legal contention is unjustified when 'a reasonable attorney would recognize [it] as frivolous.' Forrest Creek Assocs. v. McLean Savings & Loan Ass'n, 831 F.2d 1238, 1245 (4th Cir. 1987). Put differently, a legal position violates Rule 11 if it 'has absolutely no chance of success under the existing precedent.' Brubaker v. City of Richmond, 943 F.2d 1363, 1373 (4th Cir. 1991)." In re Sargent, 136 F.3d 349, 352 (4th Cir. 1998). According the United States Courts of Appeals for the Second and Fourth Circuits, a "frivolous" pleading is a pleading that has "no chance of success" under the existing precedent, which determination is a legal matter of interpreting the Rule 11(b)(2) requirement, and has nothing to do with whether the pleading is "incredible," which determination

is a factual matter of weighing evidence as required by Rule 11(b)(3). Hence, the Court of Appeals has entered a decision on what constitutes a "frivolous" pleading — its answer being "incredible" — in conflict with the decisions of the Courts of Appeals for both the Second Circuit and the Fourth Circuit. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(a) of the Rules of the Supreme Court of the United States.

VI. The Court of Appeals has entered a decision interpreting Rule 11(b)(3) in conflict with the interpretations of the Fourth and Ninth Circuits.

The District Court made the factual determinations that "there is no evidence in the record that Zhang breached this unspecified standard," Zhang, 584 F.Supp.2d, at 160 (emphasis added), and that "Footbridge proffers no facts supported by evidence that connect Zhang to the loan transaction at issue, nor any facts suggesting that Zhang undertook and breached a legal obligation that he owed to Footbridge." Id., at 161 (Emphases added). In addition, the District Court also found that "there is no evidence that Zhang intended Footbridge to be a beneficiary of his work on the loan transaction, nor evidence that he was even aware of the existence of Footbridge or the loan transaction." Id., at 161-162 (Emphases added). Despite the District Court's factual determination of no evidence proffered by Footbridge to support its pleading, the Court of Appeals affirmed the District Court's decision without offering the

Court of Appeals' own analysis in support of its judgment.

On the contrary, the United States Court of Appeals for the Fourth Circuit held, "where there is *no* factual basis for a plaintiff's allegations, the complaint violates Rule 11's factual inquiry requirement." Brubaker v. City of Richmond, 943 F.2d 1363, 1373 (4th Cir. 1991) (Emphasis original). Similarly, the United States Court of Appeals for the Ninth Circuit concluded, "[the plaintiff] has failed to produce any evidence to support any of its claims since the complaint was filed.... Taken together, the lack of adequate factual allegations as well as [the plaintiff's] subsequent failure to produce any evidence, compels [*sic*] us to the conclusion that there was no factual basis to support [the plaintiff's] complaint." West Coast Theater Corp. v. City of Portland, 897 F.2d 1519, 1528 (9th Cir. 1990), and consequently the appellate court affirmed Rule 11 sanctions against the plaintiff. According the United States Courts of Appeals for the Fourth and Ninth Circuits, a complaint with no factual basis or evidentiary support violates the Rule 11(b)(3) requirement. Hence, the Court of Appeals has entered a decision in conflict with the decisions of the Courts of Appeals for both the Fourth Circuit and the Ninth Circuit. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(a) of the Rules of the Supreme Court of the United States.

VII. **The Court of Appeals has decided on the case in a way that conflicts with this Court's decision in Bus. Guides, Inc.**

In Bus. Guides, Inc. v. Chromatic Comm. Enterprises, Inc., 498 U.S. 533, 111 S.Ct. 922 (1991), this Court affirmed a district court's Rule 11 sanctions against Business Guides, Inc. after dismissing its copyright infringement claim with the following illustration of facts:

> Two years later, after extensive time and effort on the part of the court, the various counsel for Business Guides, as well as various counsel for Business Guides' counsel, it turns out there was no evidence of infringement. The entire lawsuit was a mistake. In the meantime, the objects of this lawsuit have spent thousands of dollars of attorney's fees and have suffered potentially irreparable damage to their business. This entire scenario could have been avoided if, prior to filing the suit, Business Guides simply had spent an hour, like the court's law clerk did, and checked the accuracy of the purported seeds." Id., at 550.

The instant frivolous lawsuit, like the one filed by Business Guides, Inc., could have been avoided if Footbridge's counsel Goldman, as this Court in Bus. Guides, Inc. would have directed, had spent an hour making legal inquiry on the expert testimony requirement of a legal malpractice claim — which Goldman summarily and

nonchalantly claimed to be unnecessary in his certification in the Complaint — and inquiring about the personal knowledge purportedly forming the factual basis of Footbridge's claim before filing the Complaint. However, Footbridge's counsel Goldman did not spend even one hour making any of the inquiry "reasonable under the circumstances." Fed.R.Civ.P. 11(b) (2004).

Once Footbridge dragged Zhang through the lengthy and expensive discovery process, Footbridge demonstrated no intention to litigate the case further and did not oppose Zhang's motion to strike Footbridge's purported witness' affidavit. The District Court correctly determined the following facts:

> In his affidavit, [Footbridge's employee] Mr. Howe states that Zhang attended the closing and that Zhang "refused the issuance of a lender's title insurance policy on the property by which Plaintiff was to be secured." Mr. Howe does not state, however, that he attended the loan closing, nor does he give any indication as to how he has personal knowledge of these facts. The affidavit is silent as to his basis of knowledge.... Zhang filed a Motion to Strike certain of Mr. Howe's statements in his affidavit based on the lack of facts explaining the basis of his personal knowledge, including the statements supporting the first and second facts proffered by Footbridge above....

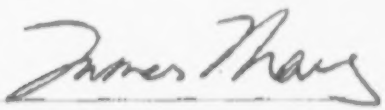
> Footbridge did not oppose Zhang's Motion to Strike, even though Footbridge could have alleviated any perceived lack of personal knowledge by simply having Mr. Howe explain the basis of his knowledge. Footbridge could have otherwise submitted (for purposes of supporting its claims on summary judgment) an affidavit or declaration from an individual who attended the loan closing and who could have attested to Zhang's attendance, as well as Zhang's alleged issuance of instructions relating to title insurance. Footbridge pursued none of these courses of action. Zhang, 584 F.Supp.2d, at 156 (Emphasis added).

Despite the similarity in factual patterns, however, the Court of Appeals in its judgment completely ignored Zhang's argument based on Bus. Guides, Inc. in his appellant's brief and refused to analyze and follow this Court's precedent in Bus. Guides, Inc. when it affirmed the District Court's decision denying Rule 11 sanctions. Hence, the Court of Appeals has decided on the requirements of Rule 11(b)(3) in a way that conflicts with this Court's decision in Bus. Guides, Inc. Therefore, this Honorable Court should grant the Petition for Writ of Certiorari pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States.

CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner James Zhang respectfully requests that this Honorable Court should grant his Petition for Writ of Certiorari.

Respectfully submitted,

/s/ 

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-7144 September Term, 2009
Filed on: December 7, 2009

FOOTBRIDGE LIMITED TRUST
Appellee

v.

JAMES ZHANG
Appellant

Appeal from the United States District Court
for the District of Columbia
(No. 1:04-cv-00347-CKK)

Before: HENDERSON, TATEL and KAVANAUGH,
Circuit Judges.

JUDGMENT

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties pursuant to D.C. Circuit Rule 34(j). It is

ORDERED and **ADJUDGED** that the judgment of the district court be affirmed.

James Zhang appeals the district court's denial of his motion for Rule 11 sanctions against Footbridge Limited Trust ("Footbridge"). The sanctions motion stemmed from a complaint filed by Footbridge against Zhang alleging legal malpractice and negligence. Specifically, Footbridge accused Zhang of

failing to timely perfect a security interest on a loan it made to a third party through a holding company that employed Zhang as a commercial transaction attorney. After more than four years of litigation and an "extensive and contentious discovery" process, the district court granted Zhang's motion for summary judgment because, among other reasons, Footbridge could not establish the applicable standard of care in the absence of expert testimony. *Footbridge Ltd. Trust v. Zhang*, 584 F. Supp. 2d 150, 157, 160 (D.D.C. 2008).

Zhang filed a motion for Rule 11 sanctions against Footbridge's attorneys, claiming that they had failed to make a reasonable inquiry before filing the complaint against him, presented legal arguments that were unwarranted based on existing law, and made a factual allegation without evidentiary support. After explaining the legal standard for imposing Rule 11 sanctions, the district court rejected Zhang's motion. *Footbridge Ltd. Trust v. Zhang*, No. 04-347 (D.D.C. Nov. 13, 2008) (order denying Rule 11 sanctions motion) ("*Order*"). We review the district court's denial of the Rule 11 motion for abuse of discretion. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *Lucas v. Duncan*, 574 F.3d 772, 775 (D.C. Cir. 2009).

On appeal, Zhang complains that the district court abused its discretion by failing to address his arguments or provide an adequate explanation for its decision not to impose sanctions. The district court, however, specifically identified each of the arguments Zhang put forward in his sanctions motion and articulated the correct legal standard for

imposing sanctions under Rule 11. The court then explained why it declined to impose Rule 11 sanctions in this case:

> Although [Zhang] prevailed on his Motion for Summary Judgment, the Court cannot find that [Footbridge's] Complaint, nor the factual and legal assertions therein, were presented for improper purposes, nor that they were so incredible as to warrant sanctions. On the contrary, the parties' respective positions required extensive discovery and briefing before the Court could ultimately render its November 5, 2008 decision. The Court therefore finds, in its discretion, that there is no basis to award Rule 11 sanctions in this case.

Order at 2–3. In view of this analysis, Zhang's assertions that the district court ignored his legal arguments and provided an insufficient explanation for its decision are without merit. Furthermore, although Zhang contends that the district court found that sanctions were unwarranted "*solely*" because Footbridge's complaint was not presented for improper purposes, Appellant's Br. 19, we do not read the court's decision to be so limited. Noting the complicated nature of the proceedings, the court concluded that Footbridge's complaint was not "so incredible as to warrant sanctions." *Order* at 2. Thus, the district court clearly considered the substance of the complaint and not just Footbridge's motive for bringing it.

Zhang's contention that the district court based its decision on clearly erroneous factual findings is similarly unavailing. *See Cooter*, 496 U.S. at 405 ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."). Zhang feels particularly aggrieved by the district court's reference to his sanctions motion as "an apparent effort to prolong this seemingly never-ending litigation." *Order* at 1. Protesting that it was in fact the district court that unnecessarily protracted the litigation, Zhang complains that the court's assertion "was patently false and was directly contradicted by Zhang's strenuous efforts to end" the lawsuit. Appellant's Br. 7. Zhang goes so far as to invite the district court to impose sanctions against him for his allegedly dilatory behavior. But the district court did not, as Zhang alleges, base its decision on Zhang's perceived motives for filing his sanctions motion. Rather, the court denied his motion because it concluded that Footbridge's complaint was not presented for any improper purpose or "so incredible as to warrant sanctions." *Order* at 2. Whether or not Zhang sought to delay the litigation is therefore irrelevant.

Zhang further asserts that Footbridge's complaint was frivolous because it lacked evidentiary support and because Footbridge failed to produce expert testimony establishing the applicable standard of care. In this circuit, however, "'decisions concerning Rule 11 sanctions are better left to the discretion of the district court which has a bird's eye view of the actual positions taken by the litigants,' and [we] will not second guess the factual determinations integral

to the district court's decision not to impose Rule 11 sanctions." *Shekoyan v. Sibley Int'l*, 409 F.3d 414, 425 (D.C. Cir. 2005) (internal citations omitted). The district court concluded that although Footbridge's complaint was ultimately a loser, it was not so frivolous as to warrant sanctions. We see no reason to second guess that determination or the court's exercise of its discretion in this case.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(b).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FOOTBRIDGE LIMITED TRUST
Plaintiff

v. Civil Action No. 04-347 (CKK)

JAMES ZHANG
Defendant

ORDER
(November 13, 2008)

The Court granted Defendant's Motion for Summary Judgment and dismissed the above-captioned case on November 5, 2008, after more than four years of litigation, multiple rounds of dispositive briefing, and extensive discovery that produced no less than nine motions to compel and/or for sanctions. In an apparent effort to prolong this seemingly never-ending litigation, Defendant has now filed a [108] Motion for Rule 11 Sanctions.[1] The Court shall deny Defendant's motion based on its lack of merit.

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[1] Because this case was removed from District of Columbia Superior Court, Defendant relies on Rule 11 of the D.C. Superior Court Rules of Civil Procedure, the local analogue to Rule 11 of the Federal Rules of Civil Procedure. Because of the two rules are nearly identical, cases and Advisory Committee Notes related to the one are persuasive authority for the other. *See, e.g., Benedict v. Allen*, No. 00-1923, 2001 U.S. Dist. LEXIS 26292 at *8 n.2 (D.D.C. Aug. 7, 2001) (Kollar-Kotelly, J.). In this case, whether Defendant proceeds under the local or federal rule is immaterial.

Rule 11 provides that in presenting to the Court a pleading, written motion, or other paper, an attorney certifies that the pleading or motion "is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needless increase the cost of litigation," that "the claims, defenses, and other legal contentions [therein] are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law," and that "the factual contentions [therein] have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(1)-(3). Where a pleading or motion is filed in violation of the Rule, the court may sanction the signatory attorney appropriately. Fed. R. Civ. P. 11(c).

The "central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of the federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). Since the 1993 amendments, the language of Rule 11 indicates that the imposition of sanctions is left to the discretion of the district court judge. *See Rafferty v. Nynex Corp.*, 60 F.3d 844, 852 n.12 (D.C. Cir. 1995); Fed. R. Civ. P. 11(c) (noting that when the rule has been violated, a court *may* impose an appropriate sanction); *see also* 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1336 (2d ed. Supp. 2000) (commenting that the scope of the Advisory Committee's list of factors to consider when deciding whether or not to impose a sanction suggests that

"the district court is given the widest possible latitude under the new" version of Rule 11).

Defendant argues that Plaintiff failed to make a reasonable inquiry before filing the Complaint in this case, presented legal contentions that were not warranted based on existing law, and made a factual allegation with no evidentiary support. *See* Def.'s Mot. at 4-16. These arguments are largely tied to the merits of the parties' Cross-Motions for Summary Judgment. Although Defendant prevailed on his Motion for Summary Judgment, the Court cannot find that Plaintiff's Complaint, nor the factual and legal assertions therein, were presented for improper purposes, nor that they were so incredible as to warrant sanctions. On the contrary, the parties' respective positions required extensive discovery and briefing before the Court could ultimately render its November 5, 2008 decision. The Court therefore finds, in its discretion, that there is no basis to award Rule 11 sanctions in this case.

Accordingly, it is, this 13th day of November, 2008, hereby

ORDERED that Defendant's [108] Motion for Rule 11 Sanctions is DENIED; it is further

ORDERED that this case shall remain dismissed in its entirety.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-7144

September Term, 2009
1:04-cv-00347-CKK
Filed on: February 2, 2010

FOOTBRIDGE LIMITED TRUST
Appellee

v.

JAMES ZHANG
Appellant

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, the supplement thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk